SUPREME COURT, U. S
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

Docket No. 72-1504

THE COCA-COLA COMPANY, *et al.*,
Petitioners,

against

FEDERAL TRADE COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONERS' REPLY BRIEF

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Discussion in Reply

The purported Opposition to the Petition for Certiorari elected not to respond separately to the Petition in this case. Rather, it lumped together the response to the Petitions in this case and the PepsiCo case.

The apparent justification for such an approach would be the understandable one of furthering the convenience of this Court.

The effect, however, is to conceal the actual lack of response to the Petition in this case. The result is also the adoption by Respondent of the extraordinary proposition that the time for determining when parties must be joined in an administrative proceeding is after the proceeding is over.

Thus, Respondent in substance:

A. Ignores the fact that failure of this Court to rule now would frustrate public policy behind an accepted judicial doctrine, specifically that indispensable parties must be determined at an early stage of a proceeding in the interest of the court, the parties, the public and third persons affected thereby, since delay would tend to defeat the purposes of that policy. (Petition pp. 15-19).

B. Ignores the fact that the decision below is in direct conflict with the applicable decisions of this Court in which this Court went to great pains to establish the standards for review of administrative action by the courts when, as here, no administrative expertise is put in issue. (Petition pp. 10-15). Respondent does not deny that no administrative expertise is put in issue.

C. Ignores the fact that deferral will help disrupt an entire industry. (Petition pp. 19-21).

The Opposition also misstates (p. 5) the grounds upon which Petitioners herein have relied. (Petition *passim*). And it advocates in substance that the rights of the *parties* may depend upon whether some independent third persons elect to intervene.

Conclusion

It is respectfully submitted that either Respondent's failure to respond should be deemed an admission, or that it should not be permitted to avoid the issues by such tactics, that attention should be given to the Petition in this case and that the Petition be granted.

Respectfully submitted,

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